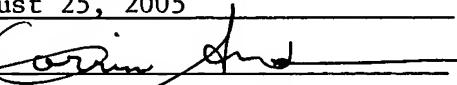


Code: AP.PRE.REQ

PTO/SB/33 (07-05)

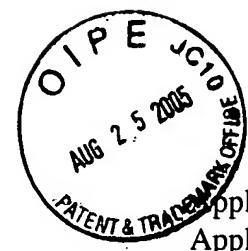
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) TN-09409
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>August 25, 2005</u></p> <p>Signature </p> <p>Typed or printed Name <u>CORRINE ANDERSON</u></p>		<p>Application Number <u>10/693,439</u></p> <p>Filed <u>10/24/2003</u></p> <p>First Named Inventor James D. Marshall, et al</p> <p>Art Unit <u>2821</u></p> <p>Examiner Leith A. Al Nazer</p>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>08/29/2005 CNGUYEN2 00000013 022548 10693439 01 FC:1401 500.00 DA</p>		
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. <input checked="" type="checkbox"/> attorney or agent of record. <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.</p> <p>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p>Registration number <u>50,988</u></p> <p>Registration number _____</p>		<p> Signature</p> <p><u>Wesley W. Muller</u> Typed or printed name</p> <p><u>(410) 716-2706</u> Telephone number</p> <p><u>8/25/05</u> Date</p>
<p><input checked="" type="checkbox"/> *Total of <u>9</u> forms are submitted.</p>		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

appl. No. : 10/693,439
Applicant : James D. MARSHALL et al.
Filed : October 24, 2004
TC/A.U. : 2821
Examiner : AL NAZER, Leith A, George B.
Confirmation No. : 2022
Docket No. : TN-09409
Customer No. : 27268
Title : LASER LEVEL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In response to the Final Office Action mailed February 25, 2005, please find the following remarks in support of the Pre-Appeal Brief Request for Review beginning on page 2.

Arguments

The Examiner rejected Claims 1, 5-10 and 12-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 6, 11, and 12 of U.S. Patent Application No. 10/277,474, now U.S. Patent No. 6,914,930 (“Raskin et al.”) in view of U.S. Patent No. 6,459,483 (“Shafer et al.”) and U.S. Patent No. 4,910,717 (“Terry”). Applicant respectfully disagrees.

The claimed invention in the current application is patentably distinct from Raskin et al., clearly evidenced by the fact the Examiner cites two additional patents to Terry and Shafer et al. to create a double-patenting obviousness type rejection. The Examiner points out that Raskin et al. fails to disclose “an electronic distance measuring circuit...disposed in the housing of the laser level for measuring the distance to a targeted object.” The prior art of Shafer et al. and Terry provide no motivation to combine their teachings with that of Raskin et al. Therefore, the double patenting rejection is improper.

The Examiner rejected claims 1, 5-10 and 12-18 under 35 U.S.C. § 103(a) as being unpatentable over Raskin et al. in view of Shafer et al. The Examiner also rejected Claims 8 and 9 under 35 USC § 103(a) as being unpatentable over Raskin et al in view of Shafer et al. in further view of Terry.

Claim 1 calls for a laser level disposable on a substantially vertical reference surface comprising a housing, a pendulum pivotably connected to the housing, a first laser diode disposed on the pendulum for emitting a first laser beam along a first path, a first lens disposed on the pendulum in the first path for converting the first laser beam into a first planar beam, the

first planar beam forming a first line on the reference surface, and an electronic distance measuring circuit disposed in the housing for measuring distance.

Admittedly, Raskin et al. claims a housing, a pendulum, a first laser diode disposed on the pendulum for emitting a first laser beam along a first path for generating a substantially horizontal line. However, Raskin et al. does not disclose an electronic distance measuring circuit disposed in the housing for measuring distance. Additionally, no where in the specification does Raskin et al. refer to implementation of a distance measuring device with the disclosed embodiments.

Shafer et al. discloses a laser level with a housing, a pendulum, a first laser diode disposed on the pendulum for emitting a first laser beam along a first path, and an electronic distance measuring circuit disposed in the housing for measuring distance. However, **Shafer et al. does not disclose disposing the laser level against a reference surface, especially a substantially vertical reference surface, or providing the laser level with a lens disposed on the pendulum in the first path for converting the first laser beam into a first planar beam, the first planar beam forming a first line on the reference surface.**

By contradistinction, Claim 1 calls for a “laser level disposable on a substantially vertical reference surface” which has “a first lens disposed on the pendulum in the first path for converting the first laser beam into a first planar beam, the first planar beam forming a first line on the reference surface.” No where in the Shafer et al. is there provided motivation to combine the teachings with Raskin et al. In fact, Shafer et al. is intended to measure the angle turned by the base unit during operation, thus measuring an angular relationship in a horizontal plane. Placement of the Shafer et al. unit on a vertical surface to project a planar beam forming a first

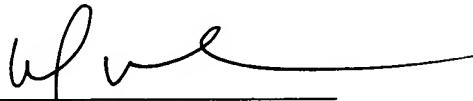
line on the reference surface would not accomplish the same objectives of Shafer et al. Therefore, the Examiner's rejection is improper.

Terry discloses an apparatus for measuring distances with a housing, an acoustic signal generator, an acoustic transducer, and a timing circuit for measuring distance. Here again, Claim 1 calls for a "laser level disposable on a substantially vertical reference surface" which has "a first lens disposed on the pendulum in the first path for converting the first laser beam into a first planar beam, the first planar beam forming a first line on the reference surface." At no point in the patent does Terry mention or provide any form of motivation to combine the measuring device as disclosed with a laser level having the characteristics as claimed by the current application.

Based on the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 1, 5-10 and 12-18 are respectfully requested.

Applicant hereby expressly requests a 3 month extension for filing a response to the Final Office Action mailed on February 25, 2005. The Commissioner is authorized to charge payment of any fees due in processing this response, to include a month extension and a filing of a Notice of Appeal, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



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(410) 716-2706